



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/155665

PRELIMINARY RECITALS

Pursuant to a petition filed February 24, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 25, 2014, at Milwaukee, Wisconsin.

With Petitioner's permission the file for Petitioner's prior appeal, case FTI-154325, was reviewed and is hereby incorporated into the record by reference.

The issue for determination is whether there is jurisdiction to hear the merits of Petitioner's appeal.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Katherine May, HSPC Sr.
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On December 13, 2013, the Public Assistance Collections Unit sent the Petitioner a notice of tax intercept, advising Petitioner that his state tax refund would be intercepted to satisfy a \$4,521.00 FoodShare overpayment. (Exhibit 3, pg. 50).
3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 18, 2013. (See File for case FTI-154325)
4. On January 9, 2014, the Petitioner signed a withdrawal of his hearing request, because he believed the agency was no longer holding him responsible for the overpayment, since he explained that he was not living with his father during the overpayment period. (Testimony of Petitioner; see also the file for case FTI-154325)
5. The Withdrawal was received by the Division of Hearings and Appeals on January 17, 2014. (See File for case FTI-154325)
6. On January 21, 2014, Assistant Administrator Ken Duren issued a decision dismissing Petitioner's appeal, based upon the January 9, 2014 withdrawal signed by the Petitioner. (See file for case FTI-154325)
7. The Petitioner filed another appeal of the December 13, 2013 tax intercept notice. This appeal was received by the Division of Hearings and Appeals on February 24, 2013. (Exhibit 1)

DISCUSSION

The appeal that Petitioner filed on February 24, 2013, was actually a rehearing request in case FTI-154325. Unfortunately, that rehearing request was filed too late.

Pursuant to Wis. Stats. §227.49, a party may file a request for rehearing within 20 days of service of a final order.

Generally speaking, service is complete upon mailing. Wis. Stat. §891.46, provides that, "Unless otherwise specifically provided by statute or rule adopted under s. 751.12, summonses, citations, notices, motions and other papers required or authorized to be served by mail in judicial *or administrative proceedings* are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage." *Emphasis added*

Thus, Petitioner needed to file the rehearing request within 20 days of the January 21, 2014 decision dismissing his appeal in case FTI-154325. This would put the filing deadline at February 10, 2014. Petitioner did not file the second appeal/rehearing request until February 24, 2013, two weeks past the filing deadline. As such, Petitioner's request for a rehearing is untimely and there is no jurisdiction to address the merits of Petitioner's appeal.

While the Division of Hearings and Appeals does not have the authority to review the merits of Petitioner's appeal, there is nothing in the FoodShare policy manual that prevents the agency from reviewing Petitioner's case, on its own. In addition, the Petitioner can contact the Public Assistance Collections Unit (PACU) at 1-██████████ to see what arrangements he can work out with them.

CONCLUSIONS OF LAW

Petitioner's appeal is untimely and there is no jurisdiction to address the merits of his appeal.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

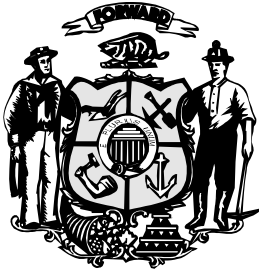
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of April, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 9, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit